

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

11:5-6.1 Advertising rules

(a) - (k) (No change.)

(l) Any home warranty offer contained in any advertisement shall comply with all Federal and State warranty legislation, including the New Home Warranty and Builder's Registration Act, [c.467,] P.L.1977, c.467, N.J.S.A. 46:3B-1, et seq., and the Magnuson-Moss Warranty Act, P.L. 93-637, 15 U.S.C. §§ 2301 et seq. Such advertising shall specify clearly whether the warranty is by inspection or non-inspection of the premises, whether the warranty is mandatory, and who is responsible for payment for the warranty. No advertisement shall contain an offer for a warranty unless a warranty may be secured for the property being advertised.

(m) Except as herein provided, licensees may include offers of free, discounted or other services or products in advertisements or promotional material. No offering of free, discounted or other services or products, including the offering of a free appraisal, shall be made by a real estate licensee in any advertisement or promotional material or otherwise where the promotion or offering involves a lottery, a contest, a game or a drawing, or the offering of a lot or parcel or lots or parcels, or where ***[the receipt of the benefit included in the offering is contingent upon the recipient entering into a sale, listing or other real estate contract.]*** ***the consumer is required to enter into a sale, listing or other real estate contract as a condition of the promotion or offer.***

1. Nothing herein shall be construed as prohibiting the use of such words as "included" or "included in the purchase price" in reference to items included by the owner in the sale of any real property or interest therein.

2. The prohibition upon licensees making offerings of free, discounted or other services or products as set forth in (m) above applies to all such offerings which confer a monetary benefit upon consumers. Examples of free or discounted products or services which would be prohibited if offered in a manner proscribed by (m) above include free or subsidized homeowners warranties, property, radon and pest inspections, surveys, mortgage fees, offers to pay other costs typically incurred by parties to real estate transactions, and coupons offering discounts on commissions charged by brokerage firms.

[ii.] 3. "Appraisal" as used herein is given its technical meaning as a *[complete]* study and analysis by *[a certified or licensed]* ***an appraiser authorized by law to perform appraisals of New Jersey real estate*** to ascertain fair market value by using a process in which all factors that would fix price in the market place must be considered. A comparative market analysis or study is not an appraisal as herein defined. Any written comparative market study or analysis (CMA) provided by a licensee to a consumer shall include a statement indicating that the CMA is not an appraisal and should not be considered the equivalent of an appraisal. The said statement shall appear in print as large as the predominant size print in any writing reporting the results of the CMA.

4. Subject to (m) above, whenever a licensee participates in a promotion or offering of free, discounted, or other services or products ***which confers upon the recipient a monetary benefit of greater than token value, which for the purposes of this rule shall mean a value of more than \$5.00 retail,*** the licensee shall provide written disclosure to the recipient of the promotional material or offering. The disclosure shall state in a clear and conspicuous manner:

i. That a consumer is not required to enter into any listing or sale agreement or other real estate contract as a condition of their receipt and use of the free, discounted or other services or products included in the promotion or offer;

ii. Whether the consumer is required to perform any action to qualify to receive the free, discounted or other services or products offered and, if so, what specific action(s) the consumer must perform in order to do so. For the purposes of this paragraph, a consumer's attendance at any listing presentation, informational session or other meeting is considered to be an action by the consumer; and

iii. In the event that delivery of the offered services or products does not occur at the time that the disclosure is provided to the consumer, the date by which the services or products will be delivered to the consumer if the offer is accepted. ***If the delivery date is unknown to the licensee at the time the offer or promotion is extended to the consumer, the written disclosure to be provided by the licensee to the consumer shall so state.***

5. In the event that a licensee has received, or will receive, compensation for participating in a promotion or offering of free, discounted, or other services or products, the disclosure ***required*** under (m)4 above shall ***also*** state the compensation the licensee has received or will receive. Should the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq., be applicable to the arrangement between the broker and the person paying the compensation to the broker, the disclosure shall be in the form and substance required by that Act.

6. The written disclosure referenced in (m)4 and 5 above shall be provided to consumers no later than when the promotion or offer is extended by the licensee to the consumer.

i. For the purposes of this subsection, an offer or promotion is extended to a consumer when the free or discounted product or service is delivered to the consumer, or

when written confirmation of the consumer's right to receive the free or discounted product or service at some future time is delivered to the consumer.

7. No licensee may utilize a marketing or promotional program which requires, as a condition of the consumer's receipt of a free or discounted product or service, the taking of any action by the consumer prior to the delivery of the disclosure(s) referenced in (m) 4 and 5 above other than an action necessary to accomplish the delivery of the disclosure to the consumer.

(n) – (o) (No change.)

(p) Advertisements by licensees may, but are not required to, include a statement indicating that the advertiser is *["Licensed"]* ***licensed*** by the New Jersey Real Estate Commission.[""]* Any advertisement by a licensee that includes a *[statement indicating that the advertiser is licensed by]* ***reference to licensure by*** the New Jersey Real Estate Commission shall immediately thereafter also include the following *[text]* ***statement***: "Licensure does not imply endorsement"*[.]* **, which statement shall be included in the advertisement in a clear and conspicuous manner.**

The foregoing shall not apply to the displays which, pursuant to N.J.S.A. 45:15- 12, are required to conspicuously appear on the exterior of every place of business maintained by New Jersey real estate brokers and to include the name of the broker and, in the case of business entities licensed as brokers, the name of the individual licensed as its authorized broker, and the words "Licensed Real Estate Broker".*

(q) Any advertisement which includes any reference to a commission rate or compensation amount charged by the advertising licensee's brokerage firm or by one or more other brokerage firms shall also include the following statement: "In New Jersey commissions are negotiable." ***The said statement shall be included in the advertisement in a clear and conspicuous manner.***

(r) No advertisement shall contain false, misleading or deceptive claims or misrepresentations. In all advertisements which make express or implied claims that are likely to be misleading in the absence of certain qualifying information such qualifying information shall be disclosed in the advertisement in a clear and conspicuous manner.